IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL W.P. NO.1124 OF 2005 WITH 1125 OF 2005

Abdukl Jalil Ahmed Sharif Shaikh.
....Petitioner.

Vs.

Mrs. Kamrunissa A. Gafar Yaali Madat.
....Respondents.

Mr. A.A. Sawant for the Petitioner.
Mr.A.S. Shitole, APP. for the State.

CORAM : V.M.KANADE,J.
DATED : 4/5/2005

P.C.:

1. Heard learned counsel for the petitioners.

2. The petitioners are challenging the order of issuance of process passed by the J.M.F.C. Solapur on a complaint filed by the respondent No.1 under Section 138 of the Negotiable Instruments Act. It is submitted by the advocate appearing on behalf of the petitioner that there was no existing claim and liability at the time when the cheque was deposited by the complainant in the bank. It is submitted that the cheque was by way of security by the petitioner to the respondent No.1 and thus cheque was misused and deposited by the complainant in the bank. The learned counsel has relied on their agreement which was executed by the petitioner and the respondent no.1 in which it was stated that all the disputes between the parties were settled.

3. It is therefore, submitted that the present

complaint filed against the petitioner is not maintainable. It is not possible to accept the submissions made by the learned counsel for the petitioner. The complainant in the complaint has stated that there was an agreement between the complainant and the accused on 2.9.2002 and the accused had promised to pay an amount of Rs.1,80,000/- to the complainant and two cheques were issued by the accused in the sum of Rs.50,000/- each another cheque of Rs,1,00,000/- which were dishonoured after they were presented in the bank. The contention of the petitioner that there was no existing liability is a disputed question of fact and therefore, this fact will have to be decided by the trial court only after evidence is adduced by the complainant and the presumption which is raised under section 139 of the Negotiable Instruments Act is rebutted by the accused. Both the writ petitions are therefore, rejected. However, the question raised in these petitions are kept open and shall be decided by the Trial Court after evidence is lead by the complainant and presumption which is raised under Section 139 is rebutted by the petitioner herein. The Trial Court shall decide this issue on merits in accordance with law.

(V.M.KANADE, J.)